Supreme Court, U.S.
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No. 95-1268

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF MARYLAND,
Petitioner,

v.

JERRY LEE WILSON,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	Page
REPLY ARGUMENT	1
CONCLUSION	4

TABLE OF AUTHORITIES

Page

Cases:

Delaware v. Prouse, 440 U.S. 648 (1979) 2
Michigan v. Summers, 452 U.S. 692 (1981) 1
Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam) 1, 3, 4
United States v. Armstrong, 116 S. Ct. 1480 (1996) 2
Whren v. United States, 116 S. Ct. 1769 (1996) 2

Constitutional Provision:

U.S. CONST. amend. IV 1, 2, 3, 4

REPLY ARGUMENT

1. The order to respondent Wilson to alight from the car occurred during a lawful traffic stop. He concedes as much (Resp. Br. 17) but contends that the order violated the Fourth Amendment because it was unaccompanied by any suspicion of wrongdoing on his part. Because the order came as a mere incident to the traffic stop, it was reasonable in light of the officer's need to complete the stop safely. Indeed, this incidental intrusion was no different from that approved in *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (per curiam), and the other cases catalogued in Maryland's opening brief. (Pet. Br. 22 & n.11).

One such case is *Michigan v. Summers*, 452 U.S. 692 (1981). Wilson takes issue with Maryland's reliance on *Summers* because, in that case, there was a warrant to search the house. (Resp. Br. 28). The relevance of *Summers* to this case, however, is its premise that once the police have undertaken a valid search or seizure, they may automatically take limited protective steps to safely effectuate that Fourth Amendment event. That principle applied here means that the initiation of a lawful traffic stop authorizes an officer, without further justification, to order all occupants to exit the vehicle.

Thus, contrary to Wilson's assertion (Resp. Br. 31), it is unnecessary to "transfer" to the passenger the suspicion that focused upon the driver by virtue of the traffic infraction. This Court did not require any suspicion of danger or wrongdoing on the driver's part to justify the exit order in *Mimms*, 434 U.S. at 109-11, and no suspicion is needed here. Instead, the order is justified by the potential danger to the police officer in approaching

persons seated in a vehicle, whether they are drivers or passengers.

2. Because of the reasonableness of an order controlling the movement of occupants as an incident to a traffic stop, Wilson engages in hyperbole by asserting that such authority would "unconstitutionally extend unfettered discretion" to the police to "engage in fishing expeditions for evidence." (Resp. Br. 32, 35). This case does not present a situation in which police seek permission to stop vehicles merely because they contain passengers. *Cf. Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (police cannot randomly stop vehicles on the highway without any suspicion of wrongdoing). Nor was the officer here seeking to gather evidence of the passengers' criminality once the car was stopped. Rather, the officer simply took a minimal step to control the movements of the car's occupants during the course of a lawful stop of the vehicle. That any further intrusion must be justified by particularized suspicion highlights the reasonableness of giving police officers this limited authority. *See* Brief for the United States as Amicus Curiae 14 n.3.

3. Wilson's contention that officers will unreasonably and selectively enforce the law (Resp. Br. 32-36) is also without merit. As this Court recently explained in *Whren v. United States*, 116 S. Ct. 1769, 1774 (1996), an officer's subjective intent does not invalidate "objectively justifiable behavior under the Fourth Amendment." Moreover, and contrary to Wilson's assertions, a mechanism does exist for judicial review of a particular officer's abusive exercise of authority. *See id.* (objection to intentionally discriminatory application of laws is made pursuant to Equal Protection Clause); *cf. United States v. Armstrong*, 116 S. Ct. 1480, 1486 (1996) (selective

prosecution claim alleges denial of equal protection of the law). In short, the mere potential for selective enforcement does not render an entire rubric of police conduct unreasonable under the Fourth Amendment.

4. Wilson's argument that traffic stops are not inherently dangerous (Resp. Br. 37-38) is simply wrong. As discussed at page 17 of Maryland's opening brief, this Court has already recognized the inherent danger of traffic stops. Indeed, the danger presented by traffic stops was the primary basis for allowing the exit order in *Mimms*. 434 U.S. at 110. Moreover, the statistics set forth in the amicus briefs confirm that traffic stops are dangerous for police officers. *See* Brief for the United States as Amicus Curiae 8-10; Brief for National Association of Police Organizations, Inc. as Amicus Curiae 4-8; Brief for State of Ohio et al. as Amici Curiae 5-6; Brief for Americans for Effective Law Enforcement, Inc. et al. as Amici Curiae 7-8; Brief for the Criminal Justice Legal Foundation as Amicus Curiae 18.

Wilson discounts these statistics, arguing that traffic stops result in a high number of injuries to officers merely because "traffic stops constitute, by far, the most frequent encounter between the police and the public." (Resp. Br. 38). The fact remains that over 5,000 police officers are assaulted each year during the course of so-called "routine" traffic stops. But for the fact that police in the majority of jurisdictions have been authorized to control all occupants, and not just the driver (Pet. Br. 8 n.2), the figure would doubtless be much higher.

5. Upholding the constitutional validity of Trooper Hughes's conduct as a reasonable intrusion on the passenger's liberty hardly represents "a repeal of the Fourth Amendment." (Resp. Br. 39). This intrusion, as in

Mimms, is a necessary incident of the traffic stop to allow officers to protect themselves from potentially lethal danger. Allowing the officer to take limited measures to control the movements of *all* occupants, for the sole purpose of ensuring the officer's safety, is reasonable under the Fourth Amendment.

CONCLUSION

For the foregoing reasons and those stated in the State of Maryland's opening brief, the judgment of the Court of Special Appeals of Maryland should be reversed.

Respectfully submitted,

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